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7 UNITED STATES BANKRUPTCY COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 SAN JOSE DIVISION

11 **In re**

12 **THUAN-VU D HO,**

13 **Debtor.**

15 **KARI SILVA BOWYER, Trustee of**
16 **the Bankruptcy Estate of**
17 **Thuan-Vu D Ho,**

18 **Plaintiff,**
19 **vs.**

20 **LUU PHUONG NGUYEN aka LUUPHUONG**
21 **NGUYEN, BAO QUOC NGUYEN and**
MINH DUC T. LUU,

22 **Defendants.**

Case No. 14-50354 ASW-7
Chapter 7

ADVERSARY PROCEEDING
NO.

COMPLAINT FOR INJUNCTIVE
RELIEF, TO AVOID FRAUDULENT
TRANSFERS, TO AVOID POST-
PETITION TRANSFERS, FOR AN
ACCOUNTING AND TURNOVER OF
PROPERTY OF THE ESTATE AND
FOR DECLARATORY RELIEF

24 **COMES NOW** plaintiff, Kari Silva Bowyer, trustee in bankruptcy,
25 and respectfully alleges the following:

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Complaint for Injunctive Relief,
To Avoid Fraud. Transfer, etc.

JURISDICTION AND VENUE

1. This action is an adversary proceeding as defined by Federal Rules of Bankruptcy Procedure (hereinafter "FRBP") 7001(1), 7001(2), 7001(3) and 7001(9), including a proceeding for injunctive relief, and is brought pursuant to 11 U.S.C. §§ 105(a) 362(a), 363(h), 541(a), 542(a), 548(a), 549(a), 550(a) and 551.

2. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue is proper pursuant to 28 U.S.C. §1409.

3. This adversary proceeding is a core proceeding as that term is defined at 28 U.S.C. §§ 157(b)(2)(A), (E), (H) and (O) in that it is an action, among other things, for a determination of an interest in property concerning the administration of the estate, affecting liquidation of assets of the estate, for turnover of property of the estate, and to determine, avoid and recover fraudulent conveyances. Plaintiff consents to the entry of a final order or judgment by the bankruptcy court.

GENERAL ALLEGATIONS

4. On January 30, 2014, a voluntary petition for relief under Chapter 7 of the Bankruptcy Code was filed by debtor, Thuan-Vu D Ho ("Debtor"), in the above-captioned court as Case No. 14-50354 ASW-7 ("Bankruptcy Case") and an order for relief entered.

5. On February 14, 2014, a voluntary petition for relief under Chapter 7 of the Bankruptcy Code was filed by Thuan-Vu Dinh Ho, DMD, Inc. dba Prima Dental Care (the "Corporation") in which Debtor is sole shareholder, in the Northern District of California, San Francisco Division, as Case No. 14-30226 (the "Corporate Bankruptcy Case") and an order for relief was entered.

1 6. In connection with the filing of the Bankruptcy Case,
2 Debtor listed a debt of \$996,935.79 as wholly unsecured on Schedule
3 D entered on the court docket as document #1, page 14, which debt
4 Plaintiff is informed and believes was incurred by the Corporation
5 in or about 2006, that Debtor guaranteed the obligation, and with
6 respect to which the Corporation defaulted as early as May 2012.

7 7. Kari Silva Bowyer ("Plaintiff"), is the duly appointed,
8 qualified and acting trustee of the estate of the Debtor.

9 8. Debtor is an individual debtor under Chapter 7 of the
10 Bankruptcy Code in the Northern District of California.

11 9. Plaintiff is informed and believes and thereon alleges
12 that defendant, Luu Phuong Nguyen aka Luuphuong Nguyen
13 ("Luuphuong"), is and at all times relevant herein was, an
14 individual and either the wife or ex-wife of the Debtor.

15 10. Plaintiff is informed and believes and thereon alleges
16 that defendants, Bao Quoc Nguyen Minhduc T. Luu (hereinafter
17 collectively "Parents"), are and at all times relevant herein were
18 individuals, Debtor's former in-laws, and Luuphuong's parents.

19 11. Plaintiff is informed and believes and thereon alleges
20 that Debtor and Luuphuong were married on or about November 17,
21 2008, and that they were separated on January 5, 2013.

22 12. Plaintiff is informed and believes and thereon alleges
23 that any and all earnings acquired by either Debtor or Luuphuong
24 during their marriage including the period from November 17, 2008
25 through and including January 5, 2013 (hereinafter referred to as
26 "Earnings Acquired During Marriage"), were at all times community
27 property and therefore, property of the bankruptcy estate.

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1 13. Plaintiff is informed and believes and thereon alleges
2 that on or about April 2, 2013, Luuphuong filed a Petition for
3 Dissolution of Marriage in the Santa Clara Superior Court, as Case
4 No. 1-13-FL-164502 ("Family Law Case"), in which Luuphuong is
5 Petitioner and Debtor is Respondent.

6 14. Plaintiff is informed and believes and thereon alleges
7 that on or about November 13, 2009, Debtor and Luuphuong purchased
8 the real property located at 3482 Lapridge Lane, San Jose,
9 California, Assessor's Parcel No. 414-30-117 ("the Lapridge
10 Property") for the sum of \$630,000.00.

11 15. Plaintiff is informed and believes and thereon alleges
12 that on or about February 4, 2013, less than one (1) year prior to
13 the filing of the Bankruptcy Case, Debtor executed an Interspousal
14 Transfer Grant Deed, recorded February 14, 2013, as document number
15 22093512, in the Santa Clara County Recorder's Official Records, a
16 copy of which is attached hereto as Exhibit "A", without exhibit,
17 and incorporated herein as though set forth at length, pursuant to
18 which Debtor transferred all of his right, title and interest in
19 the Lapridge Property to Luuphuong, a married woman as her sole and
20 separate property.

21 16. Plaintiff is informed and believes and thereon alleges
22 that prior to Debtor's marriage to Luuphuong, Luuphuong and her
23 Parents purchased the real property located at 1632 South White
24 Road, San Jose, California, APN 647-31-004 ("the White Road
25 Property"), the legal description of which is as follows:

26 LOT 436, as delineated upon that certain Map entitled
27 "Tract No. 2306", filed for record in the Office of the
28 Recorder of the County of Santa Clara, State of
California, on July 20th, 1959 in Book 109 of Maps, at
Pages 23 and 24.

1 17. Plaintiff is informed and believes and thereon alleges
2 that on or about June 5, 2013, less than one (1) year prior to the
3 filing of the Bankruptcy Case, a Judgment of Dissolution was filed
4 in the Family Law Case ("Judgment of Dissolution").

5 18. The Judgment of Dissolution provided, in relevant part,
6 for Luuphuong to be awarded, as her sole and separate property,
7 various property including, but not limited to the Lapridge
8 Property, the White Road Property, a 2005 Toyota Camry, a 2010
9 Toyota Highlander ("Highlander"), any and all credit cards or other
10 debts in Wife's name alone, and all financial accounts in her name,
11 or jointly with another other than with Debtor.

12 19. The Judgment of Dissolution also provided, in relevant
13 part, for Debtor to be awarded, as his sole and separate property,
14 a Cancun timeshare, all furniture, furnishings, and personal
15 property belongings including jewelry currently in his possession,
16 the business known as "Prima Dental Care" including any and all
17 assets and/or liabilities thereon, any and all credit cards or other
18 debts in Husband's name alone, and all financial accounts in
19 Husband's name, or jointly with another other than Wife.

20 20. Plaintiff is informed and believes and thereon alleges
21 the Lapridge Property was purchased with Earnings Acquired During
22 Marriage, and that at all times thereafter, all mortgage payments
23 and improvements to the Lapridge Property, if any, were paid from
24 Earnings Acquired During Marriage which were community property.

25 21. Plaintiff is informed and believes and thereon alleges
26 the Lapridge Property was at all times a community property asset
27 and property of the bankruptcy estate that Debtor transferred to
28 Luuphuong for no consideration.

1 22. Plaintiff is informed and believes and thereon alleges
2 the Highlander was purchased with Earnings Acquired During
3 Marriage, and that at all times thereafter through Luuphuong's
4 separation from Debtor, all loan payments were paid from Earnings
5 Acquired During Marriage which were community property, and that
6 the Highlander was and is at all times a community property asset
7 and property of the bankruptcy estate.

8 23. Plaintiff is informed and believes and thereon alleges
9 that subsequent to the filing of the Bankruptcy Case, Luuphuong
10 sold the Lapridge Property on or about April 4, 2014, for the sum
11 of \$950,000.00 ("Proceeds of Sale") and that the Proceeds of Sale
12 was and is at all times a community property asset and property of
13 the bankruptcy estate.

14 24. Plaintiff is informed and believes and thereon alleges
15 that from the Proceeds of Sale, the mortgage that was paid off in
16 an less than \$500,000.00 ("the Mortgage").

17 25. Plaintiff is informed and believes and thereon alleges
18 that from the Proceeds of Sale, Luuphuong transferred \$150,000.00
19 to her Parents in repayment of a loan

20 26. Plaintiff is informed and believes and thereon alleges
21 that notwithstanding the transfer of \$150,000.00 to her Parents,
22 Luuphuong still has access her Parents' financial accounts into
23 which the \$150,000.00 was deposited.

24 27. Plaintiff is informed and believes and thereon alleges
25 that from the Proceeds of Sale, Luuphuong has since used
26 approximately \$70,000.00 of the Proceeds of Sale to pay her student
27 loan debt and approximately \$10,000.00 of the Proceeds of Sale to
28 pay off the car loan secured by the Highlander.

1 28. Plaintiff if informed and believes and thereon alleges
2 that from the \$950,000 Proceeds of Sale, the amount remaining is
3 approximately \$100,000.00 (hereinafter referred to as "the
4 Remaining Proceeds of Sale").

5 29. Plaintiff is informed and believes and thereon alleges
6 that as of the filing of the Family Law Case, as well as the filing
7 of the Bankruptcy Case, there were various financial accounts held
8 in Luuphuong's name, either alone or together with another person,
9 into which community property was deposited having been derived
10 from Earnings Acquired During Marriage.

FIRST CLAIM FOR RELIEF
For Injunctive Relief against All Defendants
[11 U.S.C. §105(a) and 362(a)]

14 30. Plaintiff reaalleges and incorporates the allegations
15 contained in paragraphs 1 through 25 inclusive, as though set forth
16 at length.

17 31. Plaintiff is informed and believes and thereon alleges
18 that unless the Defendants, Luuphuong and her Parents, are enjoined
19 and restrained by order of this Court, from taking any action to
20 transfer, hypothecate or otherwise use or distribute any and all
21 of the Proceeds of Sale and/or Remaining Proceeds of Sale in their
22 possession and/or control, pending resolution of the within
23 adversary proceeding, that great and irreparable injury may be
24 caused to the estate because the estate will lose a valuable asset,
25 its interest in the Proceeds of Sale from the Lapridge Property.

26 32. Plaintiff is informed and believes and thereon alleges
27 that she has no adequate remedy at law for the injuries which the
28 estate will suffer as a result of the possible actions of Luuphuong
and her Parents with regard to the Proceeds of Sale.

WHEREFORE, Plaintiff requests judgment as set forth below.

SECOND CLAIM FOR RELIEF

**Fraudulent Transfer against Defendant Luuphuong Nguyen
[11 U.S.C. §§ 548(a), 550(a) and 551]**

33. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 32 inclusive, as though set forth at length.

34. The transfer of the Lapridge Property by Debtor to Luuphuong referred to in paragraphs 15 and 18 were made within two (2) years before the filing of the Bankruptcy Case.

35. Plaintiff is informed and believes and thereon alleges the transfer referred to in paragraphs 15 and 18 were made by the Debtor with the actual intent to hinder, delay and defraud creditors of the Debtor.

36. Plaintiff is informed and believes and thereon alleges the transfer referred to in paragraphs 15 and 18 constituted a transfer of property of the Debtor to Luuphuong for which the Debtor received no consideration, or if the Debtor received any consideration, such consideration was not of a reasonably equivalent value.

37. Plaintiff is informed and believes and thereon alleges the transfer referred to in paragraphs 15 and 18 were made and incurred by the Debtor (i) when the Debtor was insolvent and/or such transfer rendered the Debtor insolvent and/or (ii) were made and incurred at such time as Debtor was engaged in or about to be engaged in a business for which his remaining assets were unreasonably small in relation to his business, and/or (iii) was made at such time as the Debtor intended to incur and/or believed

1 or reasonably should have believed that he would incur debts beyond
2 his ability to pay as they became due.

3 38. Plaintiff is entitled to avoid and preserve such transfer
4 for the benefit of the estate pursuant to the provisions of 11
5 U.S.C. §§ 548(a), 550(a) and 551.

WHEREFORE, Plaintiff prays for judgment as set forth below.

THIRD CLAIM FOR RELIEF

**Post-Petition Transfer against Defendants Luuphuong Ngyuen,
Bao Quoc Nguyen and Minhduc T. Luu
[11 U.S.C. §§ 549(a), 550(a) and 551]**

39. Plaintiff reaalleges and incorporates the allegations contained in paragraphs 1 through 38 inclusive, as though set forth at length.

40. Plaintiff is informed and believes and thereon alleges that at the time of the transfers of property by Luuphuong referred to in paragraphs 23 through 27 above, including but not limited to the transfer and sale of the Lapridge Property, the transfer of the Proceeds of Sale to Luuphuong's Parents, and to pay Luuphuong's student loan and car loan secured by the Highlander, Luuphuong had full knowledge of the commencement of the Bankruptcy Case.

41. Plaintiff is informed and believes and thereon alleges the transfers referred to in paragraphs 23 through 27 above constituted transfers of property of the Debtor to Defendants, Luuphuong and her Parents, for which the Debtor received no consideration, or if the Debtor received any consideration, such consideration was not of a reasonably equivalent value.

42. Plaintiff is entitled to avoid and preserve such transfers for the benefit of the estate pursuant to the provisions of 11 U.S.C. §§ 549(a), 550(a) and 551.

WHEREFORE, Plaintiff prays for judgment as set forth below.

FOURTH CLAIM FOR RELIEF
Declaratory Relief

[Fed Rule of Bankruptcy Proc. 7001 and 11 U.S.C. §541(a)(2)]

43. Plaintiff reaallges and incorporates the allegations in paragraphs 1 through 42, inclusive, as though set forth at length.

44. Plaintiff is informed and believes and thereon alleges that the property referred to in paragraphs 15, 18 and 20 through 23 above, including but not limited to the Lapridge Property and the Highlander were either acquired with Earnings Acquired During Marriage, consisted of Earnings Acquired During Marriage, and/or the debts paid with Earnings Acquired During Marriage were secured by said property, and that pursuant thereto, said property and/or an interest in said property are community property assets and are property of the bankruptcy estate.

45. Plaintiff is informed and believes and thereon alleges that Luuphuong claims some right, title and interest in the property referred to in paragraphs 15, 18 and 20 through 23 above.

46. Plaintiff is informed and believes and thereon alleges that Luuphuong disputes the contentions alleged in paragraphs 15 and 18 and 20 through 22 above.

47. An actual controversy exists between Plaintiff and Defendant with regard to the validity, nature and extent of their respective interests in various property referred to in paragraphs 15, 18 and 20 through 22 above including but not limited to the Lapridge Property and the Highlander.

48. It is necessary that this Court declare the actual rights and obligations of the parties and make a determination as to their respective interests in various property referred to in paragraphs

1 15, 18 and 20 through 22 above including but not limited to the
2 Lapridge Property and the Highlander.

3 **WHEREFORE**, Plaintiff prays for judgment as set forth below.

4 **FIFTH CLAIM FOR RELIEF**

5 **For an Accounting and Turnover of Property of the Estate**
6 **against Defendant Luuphuong Nguyen**
7 **[Fed Rule of Bankruptcy Proc. 7001 and]**
[11 U.S.C. §§ 541(a)(2) and 542(a)]

8 49. Plaintiff reaalleges and incorporates the allegations in
9 paragraphs 1 through 48, inclusive, as though set forth at length.

10 50. Plaintiff is informed and believes and thereon alleges
11 that from at least as early as January 5, 2013, the date of the
12 parties' separation, and continuing subsequent to the filing of the
13 Bankruptcy Case, Luuphuong has been in possession of certain
14 property of the estate, including but not limited to the Lapridge
15 Property and the Proceeds of Sale and the Remaining Proceeds of
16 Sale therefrom, and that she retains the same based upon the
17 transfer by Debtor to Luuphuong of the Lapridge Property, the
18 Highlander and other property referred to in paragraphs 15, 18 and
19 20 through 22 above, as well as the transfer to Luuphuong's Parents
20 referred to in paragraph 26 above.

21 51. The property described above constitutes property which
22 the Plaintiff herein may use, sell or lease pursuant to 11 U.S.C.
23 §363.

24 52. In the event this Court avoids the transfer of the
25 Lapridge Property and other property referred to in paragraphs 15
26 and 18 above, then it is necessary that this Court order Luuphuong
27 to account for any and all monies obtained by Luuphuong in
28 connection with Lapridge Property as well as any other property and

1 any transfers from and after January 5, 2013, as well as any and
2 all monies currently on deposit in said accounts, and to turn such
3 funds over to Plaintiff.

4 **WHEREFORE**, Plaintiff prays for judgment as set forth below.

5 **SIXTH CLAIM FOR RELIEF**

6 **For an Accounting and Turnover of Property of the Estate**
7 **against Defendants Luuphuong Nguyen,**
8 **Bao Quoc Nguyen and Minhduc T. Luu**
9 **[Fed Rule of Bankruptcy Proc. 7001 and]**
10 **[11 U.S.C. §§ 541(a)(2) and 542(a)]**

11 53. Plaintiff reaallges and incorporates the allegations in
12 paragraphs 1 through 52, inclusive, as though set forth at length.

13 54. Plaintiff is informed and believes and thereon alleges
14 that from some time after April 4, 2014 through the present,
15 defendants, Luuphuong and/or her Parents, Bao Quoc Nguyen and
16 Minhduc T. Luu, have been in possession of \$150,000.00 from the
17 Proceeds of Sale based upon the transfer of said property to them
18 by Luuphuong referred to in paragraphs 25 and 26 above.

19 55. The property described above constitutes property which
20 the Plaintiff herein may use, sell or lease pursuant to 11 U.S.C.
21 §363.

22 56. In the event this Court avoids the transfer of the
23 Lapridge Property referred to in paragraphs 15 and 18 above, then
24 it is necessary that this Court order defendants Luuphuong, Bao
25 Quoc Nguyen and Minhduc T. Luu to account for any and all monies
26 transferred to them by Luuphuong from the Proceeds of Sale from and
27 after April 4, 2014, and to turn such funds over to Plaintiff.

28 **WHEREFORE**, Plaintiff prays for judgment as follows:

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1 1. On Plaintiff's first claim for relief, for injunctive
2 relief in the nature of a temporary restraining order, preliminary
3 injunction and permanent restraining order against defendants,
4 Luuphuong and her Parents, which prohibits them from taking any
5 action to transfer, hypothecate or otherwise use or distribute any
6 and all of the Proceeds of Sale and/or Remaining Proceeds of Sale
7 in their possession and/or control, pending resolution of the
8 within adversary proceeding, pursuant to 11 U.S.C. §105(a);

9 2. On Plaintiff's second claim for relief, for an order
10 avoiding the Interspousal Transfer Grant Deed recorded February 14,
11 2013, in the Santa Clara County Official Records, as document
12 number 22093512, pursuant to which Debtor transferred all of his
13 right, title and interest in the Lapridge Property to Luuphuong,
14 a married woman, as her sole and separate property, and preserving
15 such transfer for the benefit of the estate, pursuant to 11 U.S.C.
16 §§ 548(a), 550(a) and 551;

17 3. On Plaintiff's second claim for relief, for an order
18 avoiding the transfer of the Lapridge Property as provided for in
19 the Judgment of Dissolution, pursuant to which Debtor transferred
20 all of his right, title and interest in the Lapridge Property to
21 defendant Luuphuong, and preserving such transfer for the benefit
22 of the estate, pursuant to 11 U.S.C. §§ 548(a), 550(a) and 551;

23 4. On Plaintiff's third claim for relief, for a money
24 judgment in favor of Plaintiff and against defendant Luuphuong for
25 the principal sum of \$950,000.00 reduced by costs of sale and other
26 secured obligations to be approved by the Court, subject to proof,
27 representing the net Proceeds of Sale received by defendant
28 Luuphuong as a result of the post-petition transfer of the Lapridge

1 Property, together with lawful interest, according to proof,
2 pursuant to 11 U.S.C. §§ 549(a), 550(a) and 551;

3 5. On Plaintiff's third claim for relief, for a money
4 judgment in favor of Plaintiff against defendants, Bao Quoc Nguyen
5 and Minhduc T. Luu, for the principal sum of \$150,000.00,
6 representing the monies received by said defendants as a result of
7 the post-petition transfer of said proceeds from the Proceeds of
8 Sale of the Lapridge Property from defendant Luuphuong, together
9 with lawful interest, according to proof, pursuant to 11 U.S.C. §§
10 549(a), 550(a) and 551;

11 6. On Plaintiff's fourth claim for relief, for equitable
12 relief in the form of a judgment against defendant Luuphuong
13 declaring that the Lapridge Property and the Proceeds of Sale
14 therefrom was at all times community property belonging to Debtor
15 and Luuphuong and therefore, an asset of the bankruptcy estate
16 pursuant to 11 U.S.C §541(a)(2);

17 7. On Plaintiff's fourth claim for relief, for equitable
18 relief in the form of a judgment against defendant Luuphuong
19 declaring that the Highlander was at all times community property
20 belonging to Debtor and Luuphuong and therefore, an asset of the
21 bankruptcy estate pursuant to 11 U.S.C §541(a)(2);

22 8. On Plaintiff's fifth claim for relief, for a judgment
23 against defendant Luuphuong requiring Luuphuong to provide an
24 accounting of the Proceeds of Sale from the sale of the Lapridge
25 Property from and after April 4, 2014 through and including entry
26 of judgment, pursuant to 11 U.S.C. §542(a);

27 9. On Plaintiff's fifth claim for relief, for a judgment
28 against defendant Luuphuong requiring Luuphuong to provide an

1 accounting of any and all monies on deposit in the financial
2 accounts in her name as of January 5, 2013, through and including
3 the filing of the Bankruptcy Case, pursuant to 11 U.S.C. §542(a);

4 10. On Plaintiff's sixth claim for relief, for a judgment
5 against defendant Luuphuong and against defendants, Bao Quoc Nguyen
6 and Minhduc T. Luu, requiring said defendants to provide an
7 accounting of the \$150,000.00 transferred by defendant Luuphuong
8 to her Parents, from and after April 4, 2014 through and including
9 entry of judgment, pursuant to 11 U.S.C. §542(a);

10 11. For costs of suit incurred herein including reasonable
11 attorneys fees; and,

12 12. For such other and further relief as the Court deems just
13 and proper.

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15 Dated: April 16, 2014

LAW OFFICE OF MARLENE G. WEINSTEIN

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By: /s/ Marlene Gay Weinstein
MARLENE G. WEINSTEIN
Attorney for Plaintiff
Kari Silva Bowyer, Trustee

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Complaint for Injunctive Relief,
To Avoid Fraud. Transfer, etc.

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